



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Environmental Justice News for the Week Ending March 19, 2004

FROM: Nicholas Targ, Counsel
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This summarizes environmental justice news for February 1, 2004, through the week ending March 19, 2004. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: “(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low***income) or (executive order 12898) or (civil right! w/50 environmental)”. Please note that we have not included multiple articles covering the same topic or articles pertaining to international or foreign-based environmental justice issues, unless they have a direct connection to the United States.

For the week ending March 19, 2004, the following news is current:

News

1. William Hathaway, “Minority Children More Prone to Allergies, Severe Asthma,” The Hartford Courant, Connecticut (March 17, 2004).

The article reports on new asthma studies, which “reiterate that poor children and minority children are being hit hardest...” The article links allergies, ethnicity and asthma, reviewing a Connecticut study that finds, “[y]oung Puerto Rican and African American asthmatics are two to three times more likely to be sensitive to some allergens than white children with asthma...”

2. Pamalea Wood, “Lawmaker seeks to nix west county landfill proposal,” The Maryland Gazette, Maryland (March 13, 2004).

Community residents in rural western Maryland are looking to the State legislature to stop the siting of a proposed landfill in their neighborhood. The article reports, “A bill

introduced by Baltimore Del. Clarence Davis would ban any new rubble landfills from opening within 2 miles of historic St. John AME Zion Church. It's a not-so-veiled attempt to stop the proposed Chesapeake Terrace landfill that would sit across the street from the church. The church located off Conway Road; in Wilson Town dates back to the late 19th century when a group of Quakers donated land and a building for a church to newly freed slaves who settled there. Many of their descendents still live there today," the article reports.

3. Ed Bierschenk, "Do all roads lead to same path?; In the past, a number of major road projects have served to segregate and tear apart low-income neighborhoods rather than help them," Vero Beach Press Journal, Florida (March 13, 2004).

The article considers the role that road and highway construction can play in racial segregation. The article reports that, "Nationwide, planners are now taking extra steps to make sure they take into account the impact of transportation projects on communities such as Gifford, where many minority and low-income residents live. The efforts are an outgrowth of a federal policy known as Environmental Justice."

4. Jay Rey, "Watchdog Group Accuses State Of Environmental Racism," Buffalo News, New York (March 12, 2004).

Citizens Environmental Coalition, a statewide environmental watchdog organization, released a report accusing the State of New York of "environmental racism," according to the article. The article quotes the report as finding that, "[n]eighborhoods that are predominantly minority have more than 32 times the number of air-polluting facilities than they should..." Upon the report's release Assemblywoman Crystal Peoples (D-Buffalo), is quoted as saying, "Environmental racism is real.... It's one more 'ism' that threatens the quality of life in economically challenged communities of color."

5. "EPA's Justice Program Criticized," Chemical Week (March 10, 2004).

The short article highlights aspects of a recent EPA Inspector General report on environmental justice. The article reports that the Inspector General found that, "the agency has not fully complied with a 1994 environmental justice executive order, which requires it to make sure that minority and low-income populations are not subjected to a disproportionately high level of environmental risk. OIG says EPA has not identified those populations, or defined disproportionately high level of risk," the article reports.

6. "Community Datebook," Anchorage Daily News, Anchorage, Alaska (March 9, 2004).

The article reports, "Alaska Community Action on Toxics Community Health and Environmental Justice Spring Film Series presents 'Kids and Chemicals,' a Bill Moyers TV special, 7-9 p.m., Tundra Espresso Cafe, Fifth Avenue and A Street."

7. "Chrome Plating," City News Service, Los Angeles, California (March 8, 2004).

An inspection conducted by the South Coast Air Quality Management District has led to the filing of a six count criminal claim against US Polestar Engineering Co., LTD, for environmental violations. Each count carries a maximum penalty of six months in jail and/or a \$1,000 fine, according to the article. "We are seeking environmental justice for residents and children by ensuring that industrial polluters comply with every letter of every law on the books," Los Angeles City Attorney Rocky Delgadillo is quoted as saying.

8. Gillian Harris, “Stop dumping on us, complain landfill villagers,” The Times, London, England (March 5, 2004).

Residents of the Scottish villages of Geengairs, Wattson, Glenvamis and Plains protested outside the Parliament building against the siting of a ninth landfill near their villages. Ann Coleman of the Greengairs environmental forum is quoted as saying, “We are unique, no other community in Scotland is being asked to live with such an unfair burden of dumping and mining. We are only asking the Scottish Executive to deliver on their social and environmental justice promises.”

9. “Outdoors hot line: site of the week,” Anchorage Daily News, Anchorage, Alaska (February 8, 2004).

On February 9th – 13th a forum, held at the Egan Center in Anchorage, Alaska, brought together government agencies, military personnel, nonprofit organizations and citizens to address environmental concerns. The article reports, “that the areas focused upon were environmental justice, air quality, water quality, solid-waste management, hazardous waste and chemical spill response, climate change, environmental education, energy, and wildlife management.”

B. Legislation/Policy–

1. Federal Motor Carrier Safety Administration, Department of Transportation, FMCSA Order 5610.1 *Subject: National Environmental Policy Act Implementing Procedures and Policy For Considering Environmental Impacts.* 69 FR 9680 (March 1, 2004, effective March 31, 2004).

Among other provisions, the order precludes, under §D.1.3(a)(13), the use of NEPA categorical exclusions if the proposed activity “[h]as a reasonably disproportionate (high and adverse) effect on a minority or low income population.” The order further provides that, “[i]f an EA or EIS is necessary, then you must also consider the significance of impacts on the socioeconomic environment and environmental justice. Significant impacts in either of these two realms alone are NOT enough to trigger an EA or EIS. However, if an EA or EIS is prepared due to the potential for significant environmental impacts, then these documents should include discussion of any potentially significant socioeconomic or environmental justice impacts as well.”

2. H.R. 3809, “A bill to restore, reaffirm, and reconcile legal rights and remedies under civil rights statutes,” introduced by John Lewis (D-GA) on February 11, 2004. [NOTE: companion bill S.B 2088 introduced by John Kerry (D-MA) on February 12, 2004.]

Among other things this bill would establish a private right of action to enforce prohibitions against disparate impact discrimination.

3. S. 2095, “Energy Policy Act of 2003,” introduced by Sen. Pete Domenici (R-NM) on February 12, 2004.

Among the many other provisions of the bill, section 637(a)(4)(D) would: (1) limit the environmental review that the Nuclear Regulatory Commission would need to conduct in the licensing of uranium enrichment facilities; and (2) require consideration of environmental justice through the application of the “criteria in Appendix C of the final report entitled “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,” (NUREG-1748) (

August 2003). *[NT Notes: The Nuclear Regulatory Commission issued a draft policy statement on environmental justice on November 5, 2003, which is available online at <<http://www.epa.gov/fedrgstr/EPA-IMPACT/2003/November/Day-05/i27805.htm>>.]*

4. California, A.B. 2324, introduced by Assembly Member Wilma Chan (D-Oakland) on February 19, 2004.

Among other provisions, the bill, which addresses health disparities, would require specified state programs to collect data regarding the race, ethnicity, national origin, and primary language from service users, and would require the “Secretary of California Health and Human Services to convene a task force to delineate ways state agencies and departments can work together to eliminate the underlying determinants of racial and ethnic health disparities.” These determinants include, “various community and environmental factors... including elements of the built environment; man-made physical structures; factors related to social capital; social connectedness in a community; structural factors including business and marketing priorities; and qualities of services and institutions.”
<www.leginfo.ca.gov/pub/bill/asm/ab_2301-2350/ab_2324_bill_20040219_introduced.html>

5. Connecticut, H.B. 5535, “An Act Concerning Environmental Justice,” introduced by the House Committee on Joint Committee on Public Health on February 25, 2004.

The bill would require the Department of Environmental Protection, by June 1, 2005, to identify “overburdened communities” (e.g., “those towns, cities or boroughs that have the highest amounts of air pollutants, toxic emissions, gallons of waste water treated, or tons of solid waste stored, transferred, treated or disposed”). By January 1, 2005, the bill would require the DEP, Department of Public Utility Control and the Connecticut Siting to develop regulations and procedures for addressing environmental justice issues in siting, permitting, and facility authorization processes. <<http://www.cga.state.ct.us/2004/tob/h/2004HB-05535-R00-HB.htm>>

6. Massachusetts, S.B. 2219, “An Act Promoting Environmental Justice,” introduced by the Senate Committee on Joint Committee on Natural Resources and Agriculture, February 19, 2004.

This bill would largely codify the Commonwealth’s environmental justice policy. Among other things, the bill would: (1) amend the Massachusetts Environmental Policy Act to require specific public participation activities if specified projects may impact “environmental justice populations”; (2) require the development of statewide policies to promote environmental justice in the Commonwealth and protect and regulate the use of areas of critical environmental justice concern in the commonwealth; and (3) establish a state government working group to develop specific environmental justice strategies and prioritizing procedures.

7. Mississippi, S.B. 2709, “Mississippi Environmental Equity Act,” introduced by Senator Deborah J. Dawkins (D-48th Dist.) on February 19, 2004.

This bill would direct the Department of Environmental Quality to “promulgate regulations providing for a comprehensive assessment, on a continuing basis, of the extent to which identifiable populations are disproportionately exposed to potentially harmful substances in the environment on the basis of race, ethnicity or socio-economic status. The Department of Environmental Quality shall promulgate regulations providing for the development and implementation, on a continuing basis, of state regulations, policies, programs and enforcement priorities that prevent and reduce any such disproportionate exposure.” Among other things, the bill would also establish an “Environmental Equity Task Force,” which would review whether “a

minority or low-income community is disproportionately exposed to any potentially harmful substance, [and if so] the task force shall issue a moratorium on the siting or permitting of any facility that proposes to manufacture, process, store and/or release to the environment any potentially harmful substance in close geographical proximity to the disproportionately exposed minority or low-income community.”

8. Nebraska, L.B. 822, introduced by Senator Don Preister (D-5th Dist.) on January 7, 2004.

The bill would provide explicit authority to consider issues of “environmental justice,” in the environmental decisionmaking process of the state Environmental Quality Council. Specifically, the bill is meant to “ensure that environmental justice communities are not exposed to unjustly high and adverse environmental impacts.” Environmental justice communities are defined based on demographic composition.

[<http://www.unicam.state.ne.us/pdf/INTRO_LB822.pdf>](http://www.unicam.state.ne.us/pdf/INTRO_LB822.pdf)

9. New Mexico, H.J.M. 89, A Joint Memorial Requesting that the Legislative Health and human Services Committee Assess the Public Health Value of Implementing the Precautionary Principle in New Mexico,” introduced by Sen. Richard Martinez on February 10, 2004.

The resolution would recognize that “the precautionary principle outlines opportunities to promote environmental justice, protect the environment, and safeguard the health of all New Mexicans.” If enacted, the Health and Human Services Committee would assess the public health value of implementing the precautionary principle in New Mexico, hear testimony on the issue, and submit a report to the governor and the legislature by December 2004.

10. South Carolina, S.B. 941, introduced by Senator Phil P. Leventis (D-35th Dist.) on February 10, 2004.

This bill would require the Department of Health and Environmental Control to develop and implement a long-range strategy for preserving and protecting the environment and public health, recognizing the need to plan for sustainable development. The strategy would require “an assessment of the quality of the environment, environmental protection goals and objectives, and a plan of action to achieve these goals and objectives.” The bill also provides that during permitting actions the Department may “consider whether the permitted activity or project would disproportionately impact low-income and minority persons.”

[<http://www.scstatehouse.net/sess115_2003-2004/bills/941.htm>](http://www.scstatehouse.net/sess115_2003-2004/bills/941.htm)

C. Litigation–

Cox v. City of Dallas, Civ. Action No. 3:98-CV-1763-BH, 2004 U.S. Dist Lexis 279 (N.D. Tex. Feb. 24, 2004)

Plaintiffs, African American homeowners, who live adjacent to an open dump, allege that the City violated provisions of the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment by the City’s lack of action in addressing illegal dumping. On summary judgement, the court dismissed the plaintiffs’ Fair Housing Act claims, finding that the Act addresses only “discrimination related to the acquisition of... homes.” The court also dismissed a claim seeking to enforce regulations implementing the Fair Housing Act. The court reasoned that, because the complained of action was found to be beyond the scope of the statute, “it is

meaningless to talk about a separate cause of action to enforce the regulations apart from the statute.” *Alexander v. Sandoval*, 532 U.S. 274, 284 (2001). The court, however, denied the City’s motion for summary judgement against the Plaintiff’s Equal Protection Clause claims. Evaluating the allegations under the test established in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, the court found, “with respect to the illegal dumping at the... site over the course of almost 30 years the Court concludes there is a genuine issue of material fact whether the City discriminated against the Plaintiffs on the basis of race.”